

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. 08 CR 846
)
JON BURGE,) Chicago, Illinois
) June 14, 2010
Defendant.)

EXCERPT OF
TRANSCRIPT OF PROCEEDINGS - Michael McDermott testimony
BEFORE THE HONORABLE JOAN HUMPHREY LEFKOW, and a jury

APPEARANCES:

For the Government: HON. PATRICK J. FITZGERALD
219 South Dearborn Street
Chicago, Illinois 60604
BY: MR. M. DAVID WEISMAN
MS. APRIL PERRY

DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION
CRIMINAL SECTION
601 D Street NW
Room 5339
Washington, DC 22314
BY: MS. ELIZABETH L. BIFFL

**NOTE: THIS IS A PARTIAL TRANSCRIPT. IN THE EVENT OF AN
APPEAL, PLEASE CHECK TO SEE IF A FULL TRANSCRIPT IS ON FILE.
IF ONE IS, USE THE PAGINATION OF THAT TRANSCRIPT.**

PAMELA S. WARREN, CSR, RPR
Official Court Reporter
219 South Dearborn Street, Room 1928
Chicago, Illinois 60604
(312) 294-8907

** TRANSCRIPT EXCERPT **

EXHIBIT D

1 MR. BEUKE: Judge, I'm going to object. Just can we
2 be heard briefly at sidebar?

3 (Sidebar proceedings had in open court outside of the
4 hearing of the jury:)

5 MR. BEUKE: Judge, my objection is I don't mean to --
6 or I don't think it is proper for Mr. McDermott to testify as
7 to what he believes Mr. Mu'min may have said in his testimony
8 or grand jury appearance, and I don't know if there is a way
9 to, you know, admonish him outside of the presence of the jury
10 just that he is to relate what he recalls and not what he
11 believes Mu'min said.

12 MS. PERRY: Judge, I agree completely.

13 MR. BEUKE: Get out of here.

14 MS. PERRY: If I could just point a position for him
15 to -- I'd like for him to be treated as a hostile witness so
16 that I can lead him through the rest of his direct.

17 MR. BEUKE: Well --

18 MS. PERRY: His testimony is different than what he
19 has said at grand jury, and he's offering a lot that is not
20 admissible.

21 MR. BEUKE: Well, you know, I'm making that request
22 that he be admonished not to relay to what he believes Mu'min
23 may have testified to or may have said to people in the past.
24 I don't want that out, that's clearly improper. But I don't
25 think he has demonstrated that he is a hostile witness just

1 hearing of the jury:)

2 THE COURT: Be seated.

3 Mr. McDermott, counsel for Mr. Burge has asked that I
4 instruct you that your testimony not include what you think
5 Mr. Mu'min may have said at some previous testimony.

6 THE WITNESS: Okay.

7 THE COURT: Just respond to the questions based on
8 your own knowledge.

9 THE WITNESS: Yes, ma'am.

10 THE COURT: All right.

11 Is that sufficient, Mr. Beuke?

12 MR. BEUKE: It is, Judge. Thank you.

13 THE COURT: All right. We'll have the jury come back
14 in.

15 (Proceedings had in open court in the presence and hearing
16 of the jury:)

17 BY MS. PERRY:

18 Q. Sir, is it your testimony today that you did not see Jon
19 Burge point a gun at Mr. Mu'min?

20 A. He had pointed a gun at the side of the room, at least ten
21 or twelve feet away from where Shadeed Mu'min was at. From
22 where I was at, I can't see if the gun is directly pointed at
23 him or next to him or above him. But it was pointed, I would
24 say -- it appeared it was pointed at him, but you can't tell
25 from the perspective I was at.

1 Q. Sir, you testified before the grand jury on July 3rd, 2008,
2 is that correct?

3 A. Yes, I did.

4 Q. And at that time you were sworn to tell the truth, is that
5 correct?

6 A. Yes.

7 Q. And you did tell the truth, is that correct?

8 A. Yes, I did.

9 MR. BEUKE: Objection, Judge, to the leading the
10 witness.

11 BY MS. PERRY:

12 Q. I'm going to hand you what's --

13 MR. BEUKE: Leading.

14 THE COURT: Overruled.

15 BY MS. PERRY:

16 Q. -- been marked as Government Exhibit 23.

17 I'm going to direct your attention to page 13.

18 A. Okay.

19 Q. Isn't it true, sir, that you were asked these questions and
20 gave these answers before the grand jury?

21 "What do you recall occurring while you were in
22 there?

23 "Answer: I was standing there, and I saw Jon Burge
24 point a gun at him.

25 "Question: Do you know whose gun it was?

1 "Answer: It must have been his.

2 "Question: And what was he saying as he was pointing
3 the gun at him?

4 "Answer: I'm sure" --

5 MR. BEUKE: Objection, Judge.

6 BY MS. PERRY:

7 Q. -- "something to the effect about confessing."

8 MR. BEUKE: Objection.

9 THE COURT: All right. The last question and answer
10 is stricken as not impeaching.

11 BY MS. PERRY:

12 Q. Sir, were you asked those questions, and did you give those
13 answers?

14 A. Yes.

15 Q. And at the time that Jon Burge was pointing a gun, and as
16 you say in the general direction of Shadeed Mu'min, he was
17 talking to him about confessing, wasn't he?

18 A. No. I was guessing that's what the gist of it was. I told
19 you repeatedly that I don't remember the conversation that was
20 said. I know that there was not a threat like I'm going to
21 shoot you or anything like that.

22 And I also responded that the response from Shadeed
23 Mu'min was there no flinching or ducking or anything like
24 that.

25 But I'm guessing this whole thing, which I had -- is

1 just a few minutes in this whole office, the more I'm thinking
2 about it, the more since I have testified, I find that hard to
3 believe that this was about a confession. I don't know if this
4 was something personal or he knew one of the victims or maybe
5 I'm misreading the whole thing.

6 But it is not his case and it is not my case, and I
7 can't see this as somebody trying to get a confession from
8 somebody when you don't know the facts or all the facts. You
9 should have the detective that was there.

10 So I don't -- this is in an open room in his office,
11 and I don't know if it was a confession or not, and that's what
12 I testified to. I don't know, but that's what I was assuming.

13 Q. Sir, at the time you testified before the grand jury, you
14 were sure that this was something to the effect about
15 confessing, isn't that right?

16 A. No, I said I was guessing. Repeatedly I said I'm assuming
17 that's what was going on.

18 Q. Sir, directing your attention to page 14, were you asked
19 this question, and did you give this answer?

20 "Question: And what was he saying as he was pointing
21 the gun at him?

22 "Answer: I'm sure it was something to the effect
23 about confessing. I do not remember the content of the
24 conversation, but he pointed a gun. I thought it was kind of
25 silly, you know, but I saw him point a gun at the suspect."

1 Were you asked those questions, did you give those
2 answers under oath?

3 A. Yes, I did.

4 Q. Sir, at the time that you saw Lieutenant Burge point a gun
5 at Mr. Mu'min, how far away was Burge from Mr. Mu'min?

6 A. Ten to twelve feet.

7 Q. Where was Lieutenant Burge at the time?

8 A. He was on one side of the room where the windows are at,
9 and the other side of the room is where the suspect was at.

10 Q. And was the suspect sitting or standing at the time?

11 A. I don't recall.

12 Q. Is there anything that might refresh your recollection?

13 A. I believe I testified at the grand jury I don't recall.

14 Q. How far away were you from this as it took place?

15 A. Not exactly sure, but the doorway would be more towards
16 where the suspect was at.

17 Q. So were you a few feet away?

18 A. Yes.

19 Q. And were you able to hear what was spoken at the time?

20 A. Like I said something was going on. I don't recall the
21 conversation.

22 Q. I understood you don't remember the exact words spoken, but
23 were you able to hear what was going on?

24 A. There was somewhat confrontational or argumentative between
25 the two.

1 Like I said, it wasn't my case. I wasn't paying
2 attention to everything. And I do know when the gun was raised
3 up for a second that I didn't hear any threat.

4 Q. You said that Lieutenant Burge's demeanor at the time was
5 somewhat confrontational.

6 A. I would say both of them were.

7 Q. Was Mu'min doing anything to deserve having a gun pointed
8 at him, sir?

9 MR. BEUKE: Objection to the form of the question,
10 Judge.

11 THE COURT: Overruled.

12 BY THE WITNESS:

13 A. Like I said, I thought they were both argumentative.

14 BY MS. PERRY:

15 Q. My question was was he doing anything to deserve having a
16 gun pointed at him?

17 MR. BEUKE: Objection, Judge.

18 THE COURT: Overruled.

19 BY THE WITNESS:

20 A. As I testified before, it may not have been directly at
21 him. It was towards that room, which is 10 to 12 feet away
22 from anybody's position.

23 Where I was at you can't tell if that gun was aimed
24 at -- directly at him. Was it reckless? Possibly. It was
25 only for a second.

1 So whether or not you say he deserved it or not, I
2 know it was argumentative. I don't believe it was really meant
3 to be a threat, but that's my opinion.

4 BY MS. PERRY:

5 Q. All right. Well, let's talk about what happened next,
6 sir. What did you see happen after that?

7 A. I saw Jon Burge scuffle with the suspect I'm saying for
8 about 20 seconds or so.

9 Q. Isn't it true, sir, you saw Jon Burge take a piece of
10 plastic and put it over Mr. Mu'min's head?

11 A. I testified I didn't know what it was. I saw something in
12 his hands. I thought it was something clear. It wasn't over
13 his head. I saw something briefly in front of his face. The
14 suspect was talking at the time. So this whole scuffle thing I
15 testified to was about 20 seconds.

16 Q. Is it your testimony today that Lieutenant Burge did not
17 approach Shadeed Mu'min and put something over his head?

18 A. You guys keep on wanting me to say that. No, he did not
19 put something over his head. His arm might have went over his
20 head and there was something in front of his face. I clarified
21 it a few times at the grand jury. I don't know what it was.
22 It was just a glimpse of something. I thought it was clear.
23 It was 25 years ago. And it was very brief. And I know
24 Shadeed Mu'min was talking at the time.

25 Q. Sir, directing your attention to page 17 of your grand jury

1 testimony. Were you asked this question, did you give this
2 answer?

3 "Question: What happened after that, after he pointed
4 the gun at him?

5 "Answer: He approached Shadeed Mu'min, and he put
6 something over his head."

7 Was that the question you were asked, and was that the
8 answer you gave?

9 A. Yes.

10 Q. And was that truthful at the time, sir?

11 A. I'm describing it -- I clarified it. If you read all the
12 transcript, I clarified it a few times when you guys asked me
13 this. And I said there was nothing on his head. His arm might
14 have went over his head. The only thing I saw was some
15 material that was in front of the face for Shadeed Mu'min for a
16 brief time.

17 Q. And, sir, that was transparent material, was that right?

18 A. It appeared to have been, yes.

19 Q. And then you saw Shadeed Mu'min hunched over, and you
20 couldn't see the front of his head anymore, is that correct?

21 A. I think they were both hunched over.

22 Q. Well, Shadeed Mu'min was sitting, is that correct?

23 A. As I stated before, I don't know if he was sitting or
24 standing.

25 Q. Lieutenant Burge you know was standing, is that right?

1 A. I believe he was.

2 Q. He was over Shadeed Mu'min, is that right?

3 A. At one point in time I believe he was on the side or behind
4 him.

5 Q. And Lieutenant Burge approached him from behind, is that
6 right?

7 A. At one point he did.

8 Q. And that was at the point right before he put the plastic
9 thing over his face, is that right?

10 A. I saw a scuffle. I didn't see it like play by play. It
11 happened kind of quick. He approached him. He did come up
12 from the side or behind him, and there was a scuffle. And I
13 glanced over and at one point it looked like there was
14 something in Jon Burge's hand.

15 Q. And you saw that thing go over Shadeed Mu'min's face, is
16 that right?

17 A. It appeared that it was in front of his face, yes.

18 Q. And as far as you could tell Shadeed Mu'min had not
19 instigated any kind of physical contact with Lieutenant Burge,
20 isn't that right?

21 A. Physical contact? No.

22 Q. So Lieutenant Burge approached him and made the first
23 physical move, isn't that right?

24 MR. BEUKE: Objection, Judge, asked and answered. We
25 have been through this three times.

1 THE COURT: He's under cross. Overruled.

2 BY MS. PERRY:

3 Q. As you saw Lieutenant Burge place something over Shadeed
4 Mu'min's face, you could tell that Lieutenant Burge was still
5 saying something about confessing, isn't that right?

6 A. As I said before, I don't know if it was about confessing.
7 That's what I assumed this whole thing was about.

8 Q. And you understood that this was about confessing because
9 your take of that was that that's what Lieutenant Burge was
10 doing this to Shadeed Mu'min for, isn't that right?

11 A. Like I said I assumed that. I'm guessing.

12 Q. And you --

13 A. But it was only for like three minutes. You -- I have
14 never seen an interview with a violent criminal that lasted
15 three minutes, and it was in a lieutenants's office.

16 I thought it might have been something different,
17 like he knew one of the victims or he -- this was -- he had a
18 history with this guy. But to bring somebody in the
19 lieutenants's office unhandcuffed for a three-minute interview
20 when you're not even assigned the case, it doesn't make sense
21 to me.

22 I have been a detective for 30 years. I have never
23 seen it done. So I thought there was something else going on
24 here. But I would assume if you are talking to a bad guy,
25 you're trying to get a confession, but I'm guessing.

1 Q. And, sir, it only took three minutes because that's all it
2 took before Shadeed Mu'min agreed to confess, isn't that right?

3 A. He didn't confess when I was there.

4 Q. I understand you did not take the confession, sir. But
5 your understanding of the reason that this all ended was
6 because Shadeed Mu'min agreed to confess.

7 MR. BEUKE: Objection.

8 BY THE WITNESS:

9 A. I would think he could confess right after that, and he
10 never confessed.

11 THE COURT: Overruled.

12 BY THE WITNESS:

13 A. That was the end of it. If he says I'm going to confess,
14 the next thing you would do is listen to a confession. He
15 never confessed.

16 BY MS. PERRY:

17 Q. I understand that you did not take the confession. But,
18 yes or no, sir, you understood this ended because he had agreed
19 to confess, is that correct?

20 A. As I repeatedly said, I'm guessing about all this. I have
21 no idea.

22 Q. Now, sir, you said that this was not your case, is that
23 correct?

24 A. Yes.

25 Q. You also said it was not Lieutenant Burge's case, is that

1 correct?

2 A. The lieutenant wouldn't handle a robbery case as far as I
3 know. I mean, he doesn't assign himself cases. It is assigned
4 to a detective.

5 Q. So to the best of your knowledge there was no reason this
6 interview should have been happening at all, isn't that true?

7 MR. BEUKE: Objection, Judge. Form of the question.

8 THE COURT: Overruled.

9 MR. BEUKE: Calls for speculation.

10 BY MS. PERRY:

11 Q. Sir, you knew of no reason why this interview should be
12 taking place.

13 MR. BEUKE: Objection, Judge. Same objection.

14 THE COURT: Overruled.

15 BY THE WITNESS:

16 A. Like I said I thought there might be some history here.
17 Either he locked him up before for robberies or the kid that
18 was shot in the chest, maybe he knew him. It was a few blocks
19 from his house. Maybe it was something personal, I don't know.

20 BY MS. PERRY:

21 Q. And you assumed it would have been something personal
22 because of the way Lieutenant Burge was treating Shadeed
23 Mu'min, isn't that true?

24 A. He might have been talking to him, and the guy had dope in
25 his mouth. I mean, that's a common thing. Maybe he's trying

1 to get dope out of his mouth. Maybe he's spitting on the
2 floor. I have no idea. I don't know Jon Burge's intentions.
3 And it is wrong for me to say why this occurred if you don't
4 know what a person's intentions were.

5 What I do know is that Shadeed Mu'min wasn't
6 intimidated by this, and he never complained. And it lasted
7 less than 20 seconds. So this is -- I changed my mind about
8 this, I don't believe this is abuse in any way.

9 Q. When Jon Burge put that piece of plastic over Shadeed
10 Mu'min's face, he couldn't breathe, could he?

11 A. I testified --

12 MR. BEUKE: Objection.

13 BY THE WITNESS:

14 A. -- that he was talking so I imagine if he was --

15 THE COURT: Wait.

16 BY THE WITNESS:

17 A. -- talking, he could --

18 THE COURT: Wait. Don't --

19 BY THE WITNESS:

20 A. -- breathe.

21 THE COURT: Okay. Wait. When there's an objection,
22 Mr. McDermott, please don't answer.

23 THE WITNESS: I'm sorry.

24 MR. BEUKE: Judge, my objection is he has testified I
25 think on four or five different occasions in the last 30

1 minutes that it was something transparent. He never said it
2 was plastic.

3 THE COURT: That I believe is correct.

4 All right. I'll sustain.

5 BY MS. PERRY:

6 Q. When Jon Burge put that thing over Shadeed Mu'min's head,
7 he could not breathe, could he?

8 MR. BEUKE: Objection, Judge. He didn't say he put it
9 over his head. Misstates the testimony.

10 THE COURT: Try again.

11 BY MS. PERRY:

12 Q. When Lieutenant Burge put that thing in front of Mu'min's
13 face, he could not breathe, could he?

14 A. I am not Shadeed Mu'min. I think that's a possibility.
15 But I also testified Shadeed Mu'min was talking during this
16 time. So if he could talk, I guess he could breathe. And the
17 fact that it less -- lasted less than 20 seconds, I don't if it
18 was -- I don't know what the intent was. I -- I have no idea.

19 Q. You have no idea.

20 Directing your attention to page 20 of your grand
21 jury statement, sir, were you asked this question, did you give
22 this answer?

23 "Question: Could you tell whether or not Mu'min was
24 able to breathe while this bag was over his head?

25 "Answer: I don't think he would have been able to. I

1 believe that's the whole idea of doing that."

2 Were you asked those questions, did you give those
3 answers?

4 A. I did give those answers, and again I'm guessing.

5 Q. And you were guessing that that was the reason that it was
6 done was to be able to scare him, is that correct?

7 A. That's a guess.

8 Q. And that was based upon your years as a police officer, is
9 that right?

10 A. That's not knowing the intention of the person doing it.
11 And that's -- that's a guess, right.

12 Q. And it was your guess that this was being done in order to
13 get a confession, is that right?

14 A. That would be my guess.

15 Q. And, sir, you have testified today, at least, that you're
16 not sure what it was, but it was indeed a plastic bag, isn't
17 it?

18 A. I never said it was a bag. I said I saw something clear in
19 his hands.

20 Q. Directing your attention to page 21, were you asked this
21 question, did you give this answers?

22 "This was a plastic bag over the head.

23 "Answer: Correct."

24 Were you asked that question, did you give that answer
25 under oath?

1 A. Yes. But you got to read all of it, and it started the
2 September grand jury, I did clarify it again. You guys keep on
3 saying it is a bag, and I'm it wasn't a bag. I don't know what
4 it was.

5 But, yes, I started agreeing to some -- these are
6 questions given by the U.S. Attorney, and then the plastic bag,
7 and then the plastic bag, and I kept on stopping and clarifying
8 it that I had no idea what it was. So --

9 Q. Sir, were you asked the question: "This was a plastic bag
10 over the head."

11 And did you give the answer: "Correct."

12 Were you asked that question --

13 A. Yes. But you need to read the whole transcript.

14 Q. -- did you give the answer?

15 A. Yes, I said that. You need to read whole transcripts.

16 Q. Your question today, sir, is were you asked that question,
17 did you give that answer?

18 A. Yes.

19 Q. And that was under oath, is that right?

20 A. Yes. I misspoke.

21 Q. And that was over head for approximately 20 seconds, is
22 that right?

23 A. It was in front of his face for about 20 seconds, yes.

24 Q. At this time Lieutenant Burge was standing, is that
25 correct?

1 A. I believe so.

2 Q. And Mu'min was sitting, is that correct?

3 A. I don't know if he was setting or standing.

4 Q. Sir, directing your attention to page 22. Were you asked
5 this question, did you give this answer under oath?

6 "Question: But again he remained seated during this
7 entire period of time.

8 "Answer: I don't know. I believe he was seated.

9 "Question: Well, while you were in the room --

10 "Answer: I believe he was seated."

11 Were you asked those questions, did you give those
12 answers?

13 A. I answered I don't know.

14 That's correct. That's what I answered, I don't
15 know.

16 Q. You were asked the question, and you answered: "I
17 believe -- I don't know. I believe he was seated."

18 Is that correct?

19 A. Correct.

20 Q. And again Shadeed Mu'min had not done anything physically
21 to instigate this with Lieutenant Burge, had he?

22 MR. BEUKE: Objection, Judge, asked and answered.

23 THE COURT: You did ask it.

24 BY MS. PERRY:

25 Q. At the time the bag was placed over his head, had he done

1 A. No.

2 Q. And you have testified before the grand jury twice, is that
3 right?

4 A. Yes.

5 Q. And at no time did you ever say that this might have been
6 because he had narcotics in his mouth, is that right?

7 MR. BEUKE: Objection.

8 BY THE WITNESS:

9 A. Right.

10 BY MS. PERRY:

11 Q. That's a conclusion you just reached when, sir?

12 A. Thinking about it for the last year and a half.

13 Q. So this happened in the early '80s, is that right?

14 A. Yes.

15 Q. And over the 25 years between when this occurred and the
16 time that you testified before the grand jury in 2008, those
17 whole 25 years you believed that this was in order to get a
18 confession, is that right?

19 A. Believe me I'm not thinking about a 20-second scuffle. You
20 don't believe what went on in Area 2. I mean, hundreds of
21 murders a year. You are getting cases of rapes and robberies
22 every day. Thousands of cases. I'm not thinking about a
23 20-second scuffle inside the lieutenants's office. I'm
24 thinking about it now because I didn't want to lose my pension
25 and go to jail. But, you know, I didn't give it a lot of

1 thought until recently. I had to go out into the grand jury.

2 Q. And, sir, you are thinking about it now because you think
3 you might lose your pension, is that right?

4 A. I'm losing my job. I was told that there is a possibility
5 I was going to get charged with obstruction. That means I lose
6 my pension, I lose my health insurance. Yeah, I was concerned.

7 Q. And you're still concerned to this day, isn't that right?

8 A. Yeah. I asked the U.S. Attorney what did I do, am I going
9 to jail, and they shrug their shoulders, they don't tell me.

10 Q. Because you realized that you witnessed a crime, isn't that
11 true, sir?

12 A. There might have been an explanation for it.

13 Q. Sir, you realized you witnessed a crime, isn't --

14 MR. BEUKE: Objection.

15 BY MS. PERRY:

16 Q. -- that true?

17 MR. BEUKE: That's a legal conclusion.

18 THE COURT: Overruled.

19 MR. BEUKE: What question is that?

20 BY THE WITNESS:

21 A. It was very physical and violent job. I would scuffle and
22 fight with people all the time. My partner has been shot. I
23 have been put in the hospital. You're fighting with people on
24 a weekly basis. I don't know if that is a crime or not. That
25 should be up to the jury.

1 I saw a 20-second scuffle that happened 25 years
2 ago.

3 BY MS. PERRY:

4 Q. You believe what Jon Burge did was a crime, don't you,
5 sir?

6 A. With not knowing the intentions of Jon Burge, it may be
7 there was an explanation. From what I saw I thought it was
8 inappropriate, yes.

9 Q. And you realized that when you witnessed something
10 inappropriate, that you should have done something about it as
11 a sworn law enforcement officer, isn't that true?

12 A. Yes.

13 Q. And you did not do anything about it, did you, sir?

14 A. No, I didn't.

15 Q. Tell me what OPS is, please.

16 A. It's a civilian group, but it is called the Office of
17 Professional Standards, and they review cases of misconduct by
18 policemen.

19 Q. After you saw what Lieutenant Burge did to Shadeed Mu'min,
20 you had an obligation to tell OPS, didn't you?

21 A. Maybe tell somebody. I don't know about OPS.

22 Q. Well, you certainly didn't tell OPS, isn't that true?

23 A. I was interviewed by OPS, correct.

24 Q. And in fact you lied to them, isn't that right?

25 A. About a couple things, yes.

1 Q. One of those things you lied about was that if you had ever
2 seen a gun pointed at Mr. Mu'min, isn't that true?

3 A. Possibly.

4 Q. Would you like something to refresh your recollection?

5 A. No. If that was asked, I probably gave that answer.

6 Q. One the other things you lied about was whether you had
7 ever seen Lieutenant Burge place something over Mr. Mu'min's
8 head. Isn't that true?

9 A. Correct.

10 Q. You had seen both of those things happened, hadn't you?

11 A. Again nothing was put over his head. There was something
12 put in his face. But Shadeed Mu'min was lying about a lot of
13 things too, and OPS was doing an unauthorized investigation.

14 Q. That was not my question, sir. My question was you had
15 seen those things happen, hadn't you?

16 A. I was trying to explain why I wasn't giving accurate
17 answers.

18 Q. You agree that you did not give accurate answers to OPS,
19 did you?

20 A. To an unauthorized investigation on their part, yes.

21 Q. You were not truthful with them, were you?

22 A. Not entirely. Some of the answers I'm sure were truthful.

23 Q. You have never reported this really to anyone, have you,
24 apart from the members of the grand jury?

25 A. Correct.

1 (Witness temporarily excused.)

2 THE COURT: All right.

3 MS. PERRY: Judge, I understand generally where
4 Mr. Beuke is trying to get to. Pinex was abused by Detective
5 McDermott. I just don't understand why we need to go through
6 the entire history of the investigation, the fact that someone
7 was shot 15 times, the fact that there was an oral statement
8 given and then there was a written statement given. I just
9 think we're getting way too far afield here from relevant
10 testimony.

11 MR. BEUKE: Judge, you know, I can get off the oral
12 written statement topic. But just so your Honor understands,
13 at least our theory of defense in terms of Mr. McDermott's
14 testimony is that I believe that the Office of the Special
15 Prosecutor indicated in their final report that they believed
16 that Alphonso Pinex case was one of the cases that they had
17 sufficient evidence to seek an indictment against both him and
18 his partner, Mr. Maslanka, if evidence were presented to the
19 grand jury.

20 I think and I believe that he knew that prior to going
21 into the grand jury on July 3rd of 2008. In addition to that,
22 he knew because I think he was subsequently asked these
23 questions in his September appearance in front of the federal
24 grand jury, if he had lied and perjured himself during his
25 testimony on the Alphonso Pinex motion to suppress statements.

1 And he had to acknowledge in front of the federal grand jury
2 that he had in fact lied and perjured himself on that -- during
3 the course of giving testimony in front of, I believe it was,
4 Judge Karnezis at 26th and California.

5 THE COURT: You mean the state grand jury?

6 MR. BEUKE: Yeah -- no, the state trial judge, your
7 Honor.

8 THE COURT: Oh. Oh, okay.

9 MR. BEUKE: And that certainly, I think it is
10 important for the jury to understand that he has testified in
11 the past, has been administered an oath, and has for whatever
12 reason chose to lie when he has been given that oath on prior
13 occasions.

14 And I think, Judge, that's kind of where I was going.
15 And certainly with respect to -- I'll try to get there a little
16 quicker, but --

17 MS. PERRY: Judge, certainly the false statements
18 under oath are allowable. The idea that the special prosecutor
19 decided there was enough to charge this man with a crime I
20 don't think is appropriate subject for cross examination.
21 First of all, it is hearsay what the special prosecutor says.

22 Secondly, its prior decisions by -- you know, it goes
23 into the prior decisions ruling.

24 And, thirdly, it is just -- it is really far afield
25 from where we're supposed to be today. If he wants to go into

1 truth. I don't think that's the province of Ms. Perry, it is
2 the province of the jury.

3 THE COURT: All right.

4 MS. PERRY: I should have said, Judge --

5 THE COURT: So --

6 MS. PERRY: -- that he incriminated himself by
7 admitting that he had abused Mr. Pinex without provocation.

8 MR. BEUKE: Well, the other point, Judge, is that he
9 never said that in the July grand jury. He never mentioned
10 anything about abusing Mr. Pinex.

11 MS. PERRY: Judge, he also wasn't asked.

12 THE COURT: I don't know what he was asked.

13 I'm just trying to get a grip on -- the objection here
14 is to putting into evidence that the special grand jury had
15 found probable cause.

16 MS. PERRY: The Special prospector -- the Office of
17 the Special Prosecutor issued a report saying there could have
18 been enough evidence to prove beyond a reasonable doubt he had
19 abused Pinex. The problem was the statute of limitations had
20 run on all of that.

21 MR. BEUKE: Well, that's --

22 MS. PERRY: I have no idea if he knows that. I don't
23 know if he -- if that was in his mind, I don't know what basis
24 Mr. Beuke has to put it before the jury when he doesn't know
25 that either.

1 Q. And during the course of your testimony in that case, you
2 were asked questions concerning whether or not you had struck
3 Mr. Pinex during the course of time that you spent with him in
4 an interrogation room, correct?

5 A. Yes.

6 Q. And without going into the specific questions and answers,
7 would I be correct in assuming that you were asked questions
8 about you physically abusing Mr. Pinex, correct?

9 A. Yes.

10 Q. And in response to those questions you indicated in your
11 testimony back in 1986 that you had not struck Mr. Pinex,
12 correct?

13 A. They were claiming there was abuse done during the
14 interrogation, and I answered honestly that there was not.

15 Q. Well, you had a conversation with Mr. Pinex in 1985,
16 correct, after his arrest?

17 A. Yes.

18 Q. In an interrogation room in Area 2, correct?

19 A. Yes.

20 Q. And during the course of the conversation before you spoke
21 to him, you gave him his rights, correct?

22 A. Yes.

23 Q. And you had an opportunity to speak with him. Am I correct
24 that that initial conversation would have been alone?

25 A. No.

1 Q. Was anyone with you?

2 A. My partner.

3 Q. Is that Mr. Maslanka?

4 A. Yes, sir.

5 Q. Okay. And during the course of that con- -- initial
6 conversation with Mr. Pinex, did you and your partner speak
7 with Pinex about your investigation or developments in the
8 investigation that you had?

9 A. Yes. And we played audiotapes of the co-offenders
10 implicating him.

11 Q. Well, during -- at some point during that conversation,
12 sir, you and Mr. Pinex got into a confrontation, did you not?

13 A. No.

14 Q. Did you ever strike Mr. Pinex during the course of that
15 interview?

16 A. No.

17 Q. Did you ever indicate in your testimony in front of that
18 judge that you struck Mr. Pinex during the course of that
19 interview?

20 A. No.

21 Q. And you were asked questions about that in your grand jury
22 appearance, were you not?

23 A. Yes.

24 Q. In September of 2004, correct?

25 A. Yes.

1 Q. I'm --

2 A. Buts this is --

3 Q. -- talking about this first --

4 A. That's --

5 Q. -- conversation with Mr. Pinex.

6 Something happened during the course of that
7 conversation, did it not, Mr. McDermott?

8 A. There was not a conversation. He was escorted into area by
9 two other officers from a different area who made the arrest.
10 He was put into the room. I went into the room just to get
11 things organized and pat him down or whatever because he was
12 just arrested for murder.

13 My partner, I don't know where he went, I believe he
14 went to get the audio tapes that we were going to play for
15 him. This guy wasn't -- there was no conversation. He wasn't
16 listening to my instructions. He's jumping out of his chair
17 and squaring off on me like he was going to fight me, and I
18 knocked him back down in the chair.

19 Q. Well, when you say you knocked him back down in the chair,
20 did you strike him in the chest area or the torso?

21 A. I testified that I believed it was an open hand that
22 knocked this guy back down. He is a -- I had gun on my side.
23 He killed a state witness. He's a gang member. And he's
24 jumping out of the chair. I'm telling him to sit down.

25 So, yeah, I knocked him back down. I didn't think of

1 -- anything of it. It wasn't abuse. It had nothing to do with
2 the interview.

3 Q. Okay. Well, in any event, what happened during the course
4 of that interview, you testified in the grand jury that your
5 partner was not in the room, correct?

6 A. That's correct.

7 Q. He was not present when you struck Mr. Pinex in that manner
8 in the chest, correct?

9 A. That's correct.

10 Q. And you were asked questions by Mr. Cramer, did Mr. Pinex
11 ever say anything to your partner concerning the fact that you
12 had struck him in the chest, and you indicated that he hadn't,
13 correct, in the grand jury?

14 A. Probably said I didn't know.

15 Q. Okay. And he indicated -- or you were asked questions by
16 Mr. Cramer as to whether or not you ever told your partner that
17 you struck Mr. Pinex in the chest, correct?

18 A. Again I said I probably -- I didn't know.

19 Q. Okay. With respect to that motion to suppress back in
20 1986, sir, you were aware of the fact, just so it is clear for
21 the ladies and gentlemen of the jury, prior to testifying on
22 that motion, it would be customary, would it not, that you
23 would speak with the prosecutors concerning the nature or the
24 allegations in the motion? Is that a fair statement?

25 A. It depends on the State's Attorney. Sometimes -- they make

1 your partner, fair to say?

2 A. That's correct. And we took photographs of him that
3 night.

4 Q. Okay. But when you were on the witness stand during the
5 course of that motion, you never indicated or testified in
6 response to any of the questions either by the prosecutor or by
7 the lawyer for Mr. Pinex that you had struck him during some
8 encounter prior to the interrogation in the chest, correct?

9 A. I don't remember testifying, so I can't really adequately
10 answer that other than I didn't think it was anything -- much
11 of anything. It is definitely not abuse.

12 Q. Well, I understand. But in September of 2008 you indicated
13 in response to Mr. Cramer's question that you were not truthful
14 in that -- during the course of your testimony in that
15 hearing. Fair to say?

16 A. Prior to those questions, what Mr. Cramer was saying, I
17 said I felt I was truthful as far as the motions to suppress.
18 And that this -- all the questioning was revolving around when
19 we advised him of his Miranda warnings and we were conducting
20 an interview. And it flowed from there.

21 Now maybe I misunderstood the question. I can't tell
22 you what my mind was thinking because I don't remember
23 testifying.

24 Q. Okay. Well --

25 A. He pointed out that it appeared I made a false statement

1 regarding did I ever put my hands on him, and I admit that is
2 not a true statement. Whether or not I misunderstood --

3 Q. Now Mr. Cramer --

4 THE COURT: Wait, wait, wait.

5 BY MR. BEUKE:

6 Q. Mr. Cramer actually directed you to a portion of the
7 transcript, did he not?

8 A. Yeah, one portion, and I kept on trying to refer him to the
9 prior portions that had all flowed from when you and Detective
10 Maslanka went into the room, did he hit him, did I hit him,
11 blah, blah, blah. And those were a denial, and those were
12 honest answers.

13 Q. Well, at some point during that question or after he
14 directed you to those series of questions and answers in your
15 testimony at the motion to suppress, he asked you this question
16 or these series of questions, and you gave these series of
17 answers. Correct?

18 "Question: Is that a truthful answer?

19 "Answer: If they are referring to the conversation
20 and the statement in his confession, that would have been a
21 truthful answer because it starts out on page 15 about going
22 into a room, conducting a conversation, advising him of his
23 rights, and the questions go on from there, did you coerce the
24 confession out of him? Did you do this and that? And I was
25 going along with, no, no, no. I would say I was not being

1 truthful.

2 "Question: Why weren't you being truthful, sir?

3 "Answer: Because he was a murderer, and I didn't want
4 him to get off."

5 Were those your answers to those questions by the U.S.
6 Attorney back in September of 2008? Yes or no.

7 A. That is -- yes, and I was guessing. I was guessing to my
8 motivation at the time --

9 Q. Well, sir --

10 A. -- because I don't remember testifying.

11 Q. But with respect to your answers at the motion to suppress,
12 you knew you struck him in the chest, didn't you, when you were
13 in the grand jury in September of 2008, didn't you?

14 A. We're tussling with peoples every week. You don't
15 understand, this was nothing. This is I'm trying to control a
16 person who murdered a kid, and he is jumping out of chair, and
17 I knock him back down. Do I consider that abuse? Absolutely
18 not.

19 Q. My question is, sir, you never told anybody, either in
20 preparation for your testimony or in response to any questions
21 posed to you during the course of that motion that you struck
22 Mr. Pinex in the chest, did you? Yes or no.

23 A. Yes.

24 Q. Well, with respect to your appearance in July of 2008,
25 Mr. Cramer went on -- or I'm sorry. Mr. Acosta was questioning

1 fair to say that you had in your own mind information that one
2 of Mr. Mu'min's claims was that he had a gun put to his head
3 and the trigger pulled three times? Fair to say?

4 A. Yeah, but that never happened.

5 Q. Well, were you asked this question?

6 "On the date in time in question, did Jon Burge
7 remove a plastic cover from a typewriter and place it over
8 Mr. Mu'min's head while he was seated handcuffed in a chair
9 inside of Jon Burge's office?

10 "Answer: I have already told you that I don't recall
11 Burge interviewing anyone. I never witnessed an incident like
12 that."

13 Do you recall giving that answer to that question?

14 A. Yes.

15 Q. So when you were in the grand jury in July of 2008, you
16 were aware, were you not, that one of Mr. Mu'min's allegations
17 was that he had some sort of plastic cover put over his head,
18 correct?

19 A. That was the allegation.

20 Q. Okay. And do you remember being asked this question and
21 giving this answer?

22 "On the date and time in question, did you see a male
23 white detective pushing Mr. Mu'min or any other African
24 American male down onto a chair as Jon Burge forced a plastic
25 cover over his head?

1 it I took the Fifth.

2 Q. And that was because, according to your testimony, you
3 didn't know what they were going to ask you about?

4 A. Are you talking about the special prosecutor?

5 Q. Yes.

6 A. That was on the advice of my attorney.

7 Q. So again you chose to remain silent because you thought bad
8 things would happen to you if you talked about this --

9 A. Initially --

10 Q. -- right?

11 A. Initially I wanted to talk to them. I left messages with
12 the special prosecutor. And that they never returned my call.
13 So when it came down it, everybody was taking the Fifth. My
14 attorney said take the Fifth.

15 Q. So you did not answer any of their questions, is that
16 right?

17 A. Yes.

18 Q. Now you were asked on cross examination about Area 2 being
19 crowded.

20 Do you remember those questions?

21 A. Yes.

22 Q. And about how people were generally placed anywhere when
23 there weren't interrogation rooms. Is that right?

24 A. Yes, ma'am.

25 Q. Just to be clear, it was not standard procedure to

1 Attorney's made up a statement and made him sign it, so -- and
2 he said that under oath.

3 Q. But, sir, you know that Lieutenant Burge's goal was to
4 coerce a confession, isn't that right?

5 A. Like I said before, I don't know what his intentions were.
6 I felt when you talk to a suspect, it is to glean a
7 confession. But it might have been something else. He might
8 have known the victim. He -- he might have had a history with
9 him. Like I said, a three-minute interview with a suspect is
10 not my idea of a confession, trying to get a confession out of
11 somebody.

12 So I think when you have this bad guy in a room and
13 you're the police and you're trying to get information out of
14 him, but this was so brief and --

15 Q. And your interpretation of this was that it was to coerce a
16 confession, isn't that true?

17 A. I have no idea. To this day I don't know what his
18 intentions were.

19 Q. Sir, when you were before the grand jury, were you asked
20 these questions, and did you give these answers?

21 "Question: When you say you were surprised, you don't
22 know why he was doing this in front of you.

23 "Answer: Right.

24 "Question: Would you have expected him to do it in
25 his office if you weren't there?

1 "Answer: I don't think I knew him that well to do
2 something basically incriminating in front of me.

3 "Question: And when you say incriminating,
4 incriminating in what sense from your perspective?

5 "Answer:" --

6 MR. BEUKE: Judge, I'm going to --

7 BY MS. PERRY:

8 Q. -- "Coercing a confession."

9 MR. BEUKE: Object on the same basis that she objected
10 to. She is just reading the transcript.

11 THE COURT: Overruled.

12 BY MS. PERRY:

13 Q. Sir, were you asked that question, and did you give that
14 answer?

15 A. Yes.

16 Q. Now you said that and you continue to say that this was a
17 scuffle. Is that correct?

18 A. Yes.

19 Q. In truth it was a confrontation, is that right?

20 MR. BEUKE: Objection, Judge. Argumentative.

21 THE COURT: Overruled.

22 BY THE WITNESS:

23 A. I know it was going back and forth between the two of them.

24 BY MS. PERRY:

25 Q. Sir, isn't it true that this was one-sided?

1 A. Not entirely.

2 Q. Sir, isn't it true that there was no struggling or physical
3 fight put up by Mr. Mu'min until he had something placed over
4 his head?

5 A. There was nothing placed over his head. It was a scuffle,
6 and it was like 20 seconds long, and it is 25 years ago.

7 Q. Sir, in the grand jury were you asked these questions, and
8 did you give these answers?

9 "Question: As far as it being a confrontational
10 situation, this was a one-sided confrontation, correct? This
11 was Burge confronting Mu'min. Mu'min was not resisting or
12 confronting Burge in any way, correct?

13 "Answer: He could have been, I don't know. I'm sure
14 he wasn't cooperating fully with the interrogation if that's
15 what you want to say is a confrontation.

16 "Question: Well, would it be fair to say at most --

17 "Answer: I would say it was one-sided.

18 "Question: And would it be fair to say at most, maybe
19 perhaps after this bag placed over his head, he might have
20 struggled a little bit?

21 "Answer: Yes.

22 "Question: But not prior to that point?

23 "Answer: That's correct."

24 Did you give those -- were you asked those questions,
25 and did you give those answers?

1 A. Yes.

2 Q. You didn't see Mu'min spit at Jon Burge, did you?

3 A. No.

4 Q. You didn't see Mu'min hit Jon Burge, did you?

5 A. No.

6 Q. Now you testified on cross examination regarding what you
7 say that Pat Fitzgerald told you before the grand jury, is that
8 correct?

9 A. Yes.

10 Q. And during that incident, even as you recount it, Pat
11 Fitzgerald didn't use any bad language with you, did he?

12 A. No.

13 Q. He didn't scream at you, did he?

14 A. No.

15 Q. He didn't physically touch you in any way, did he?

16 A. No.

17 Q. He certainly didn't point a gun in your direction, did he?

18 A. That's correct.

19 Q. He certainly didn't put a bag over your head, did he, sir?

20 A. That's correct.

21 Q. He didn't make you feel in any way that you were going to
22 be physically assaulted, is that correct?

23 A. It was worse, he was threatening my family.

24 Q. Sir, he was threatening your family by telling you you had
25 to tell the truth?

1 BY MS. PERRY:

2 Q. Sir, were you asked this question, and did you give this
3 answer?

4 "Question: What happened after that, after he pointed
5 the gun at him?"

6 MR. BEUKE: Page, counsel?

7 MS. PERRY: 17.

8 BY MS. PERRY:

9 Q. "Answer: He approached Shadeed Mu'min, and he put
10 something over his head.

11 "Question: Do you recall what he put over Mu'min's
12 head?

13 "Answer: It appeared to be something that was, you
14 know, transparent, plastic of some sort."

15 MR. BEUKE: Objection, Judge. That's not impeaching
16 as to anything he said.

17 THE COURT: Overruled.

18 BY MS. PERRY:

19 Q. Were you asked those questions, and did you give those
20 answers?

21 A. Yes.

22 Q. And that item that you saw Jon Burge put over Shadeed
23 Mu'min's head that, sir, could have been a typewriter cover,
24 isn't that correct?

25 A. I don't know. And I clarified it later that it -- I didn't

1 see anything put over his head. But his arm might have went
2 over his head and something went in front of his face. I
3 clarified it several times in the grand jury.

4 MS. PERRY: Page 42, counsel.

5 MR. BEUKE: July?

6 MS. PERRY: Yes.

7 BY MS. PERRY:

8 Q. Sir, were you asked this question, and did you give this
9 answer?

10 "Could this object have been a typewriter cover?

11 "Answer: Yes."

12 A. Could have been.

13 Q. And, sir, you had never before this seen someone from the
14 Chicago Police Department point a gun at a suspect, had you?

15 A. All the time. I pointed guns at people.

16 MS. PERRY: Page 49, counsel.

17 BY MS. PERRY:

18 Q. Sir, were you asked this question before the grand jury,
19 and did you give this answer?

20 "Question: So you were never put in this position" --

21 MR. BEUKE: It is beyond the scope. I didn't go into
22 any of this. How is this --

23 MS. PERRY: Admitted to what happened, Judge.

24 THE COURT: Overruled.

25 BY MS. PERRY:

1 Q. "Question: So were you never put in this position
2 before where you were shown a gun in front of a suspect.

3 "Answer: Absolutely not."

4 Were you asked that question, and did you give that
5 answer?

6 A. On the street. I'm talking about on the street.

7 Q. Did you say anything about you had not ever had this happen
8 to you on the street?

9 A. You just asked did you ever see a policeman pull a gun and
10 point it anybody. I said, yeah, all the time. My partner was
11 shot. I have had shooting incidents. Yeah, you are pulling
12 your gun all the time.

13 That's what you asked me, did I ever see a policeman
14 pulling a gun at somebody, and I said, yes.

15 Q. But you had never seen it before in a lieutenants's office,
16 had you sir,?

17 A. It was never done as a way of coercing a confession by any
18 detectives I ever seen in Area 2, and it wasn't done my me.

19 Q. Of course, sir, you couldn't get into those people's heads,
20 is that correct --

21 MR. BEUKE: Objection, Judge.

22 BY MS. PERRY:

23 Q. -- as you have told the jury several times?

24 MR. BEUKE: Form of the question

25 THE COURT: Well, it is rhetorical.